

# Children's Law Center of Indiana



## Adoption

12/8/16

In **In Re Adoption of A.G.**, 64 N.E.3d 1246 (Ind. Ct. App. 2016), the Court reversed the trial court's adoption decree and remanded for further proceedings. *Id.* at 1250. On July 16, 2014, a Petition for Adoption was filed by Petitioners, the children's Father and Stepmother, in the Madison Circuit Court. On July 30, 2014, the children's natural mother (Mother), pro se filed a general answer and denial asking the court to deny the petition. Mother requested the appointment of a civil public defender, and the court heard evidence and found that Mother lacked money or the means to prosecute the case. The court appointed attorney William Byer, Jr., to represent Mother. On October 9, 2014, Mother by counsel filed an amended objection to the petition for adoption. On November 9, 2015, Attorney Byer filed a motion to withdraw his appearance, stating that Mother had failed to cooperate or communicate with him. The certificate of service to Attorney Byer's motion to withdraw his appearance did not state that the motion was served upon Mother. The trial court granted Attorney Byer's motion to withdraw his appearance on November 12, 2015. The order granting the motion to withdraw appearance did not list Mother in its distribution list. The court held the scheduled adoption hearing on December 10, 2015. Mother appeared and stated she had received the motion to withdraw appearance immediately before she was arrested and jailed for an unrelated matter. Although Mother requested another attorney, the court did not appoint another attorney for Mother. Mother did not have an attorney throughout the adoption hearing. The court's CCS entry dated December 17, 2015 stated that no new public defender would be appointed to represent Mother, but the record would be left open until December 29, 2015 to provide Mother with an opportunity to privately retain an attorney to review the record and file a motion. The CCS also said that if an attorney for Mother did not enter a timely appearance and file pleadings, the evidence would be closed and the issues submitted to the court. The court issued an adoption decree on February 4, 2016, and an amended decree on February 11, 2016.

**The Court found that the trial court abused its discretion in allowing Mother's court appointed attorney to withdraw from representation of Mother.** *Id.* at 1249. The Court looked to **In Re Adoption of G.W.B.**, 776 N.E.2d 952, 953-54 (Ind. Ct. App. 2002) and IC 31-35-1-12, stating "[w]e have held that parents whose parental rights are being terminated against their will, including in cases of termination of parental rights by an adoption which is contested by a biological parent, have three rights: (1) the right to be represented by counsel; (2) the right to have counsel provided if they could not afford private representation; and (3) the right to be informed of the two preceding rights." *A.G.* at 1249. The Court also noted the provisions of Madison County Local Rule LR48-TR3.1-26C, which, inter alia, requires an attorney to give twenty-one days' written notice to the party of the attorney's intention to seek permission to withdraw, including informing the party that failure to secure new counsel may result in

dismissal of the case or entry of a judgement or ruling against the party. A.G. at 1249. The Court noted that Attorney Byers' motion to withdraw appearance did not state whether he provided Mother with twenty-one days' written notice, including the information required in LR48-TR3.1-26C. Id. Citing K.S. v. Marion Cnty. Dep't of Child Services, 917 N.E.2d 158, 164-65 (Ind. Ct. App. 2009), the Court opined that the trial court abused its discretion in granting Attorney Byer's motion to withdraw appearance in violation of the local rule. Id. The Court also found that Mother did not have an attorney representing her during the adoption proceeding which terminated her parental rights. Id. at 1249-50. For these reasons, the Court reversed and remanded for further proceedings. Id. at 1250.